**AJALA**

**v.**

**AMERICAN LIFE INSURANCE CO. INC**

HIGH COURT LAGOS STATE

FEBRUARY 28, 1972

SUIT LD/73/68

**LEX 1972 - LD/73/68**

OTHER CITATIONS

3PLR/1972/13 (HC)

**BEFORE:** Taylor C.J

**BETWEEN**

CAROLINE O. AJALA & ANOR. (Administratrix and Administrator of the Estate of Victoria Kehinde Ajala, decd)

**AND**

AMERICAN LIFE INSURANCE CO. INC.

**REPRESENTATION**

KOKU for the plaintiffs.

JAIYESIMI for the defendants.

**MAIN ISSUES**

INSURANCE AND RE-INSURANCE LAW:- Insurer and insured – Claim on a life assurance policy - Insured dying before end of agreement - Regular payment of premium made by insured - Policy providing for 31 days’ grace for payment of premium when due – How treated

INSURANCE AND RE-INSURANCE LAW:- Insurer and insured – Life assurance policy with named beneficiaries upon death of insured person – Sum due – Whether can be enforced by representatives of estate of deceased person

INSURANCE AND RE-INSURANCE LAW:- Construction of a life insurance policy – “Period of Grace” – meaning of – How calculated – Payment made within period of grace – Effective date ascribed thereto - Mode of payment accepted between parties but not expressed in the insurance policy – How treated by court

INSURANCE AND RE-INSURANCE LAW:- Duty of insurer to pay sum due on policy – Attempt to shirk duty – Attitude of court thereto

INSURANCE AND RE-INSURANCE LAW:- Reinstatement of insurance policy - False statement made by insurer thereto – Where original insurance is shown to still be effective – Whether of no material consequence

ESTATE ADMINISTRATION/PLANNING:- Sum due on a life assurance policy taken out by deceased person with two named beneficiaries in case of death – Whether can be enforced by representatives of the estate of the deceased person – Justification of

CHILDREN AND WOMEN:- *Women and Justice administration* – Deceased woman who died of ill-health – Effort by estate representatives to recover sums due on a life insurance policy made by deceased woman and for the benefit of two named daughters – Attempt by insurance company to shirk its duty to pay on technical grounds – Attitude of court thereto

**PRACTICE AND PROCEDURE ISSUES**

PLEADINGS:- Bindingness of – Where a party’s pleadings conflicts with his evidence – Attitude of court thereto

**MAIN JUDGMENT**

**TAYLOR C.J.:**

The plaintiffs in this suit claim the sum of £1,000 upon a policy of insurance issued by the defendants upon the life of the deceased Victoria Kehinde Ajala who died on August 31, 1966. The first plaintiff died during the course of the action and the second plaintiff above proceeded with the suit.

The parties are in agreement on many points involved and the real issue as to liability is a purely legal one as to whether the policy had lapsed or not. The admitted facts are as follows: that Victoria Kehinde Ajala was insured with the defendant company on August 13, 1965, for a sum of £1,000 to be paid to her daughters, to wit Morenike and Olubukonla Ajala, in equal shares or all to the survivor on her death; that the premium payable was £3 16s. per month; that the deceased paid this sum during her lifetime, though often in arrears from August 12, 1965, as per exhibit “ E1 “ to August 24, 1966, as per exhibit “ E.16.” And as I have shown she died within two weeks of the last payment and the death certificate shows that she died of cancer of the breast and tetanus.

In addition to whether the policy had lapsed or not, Mr. Jaiyesimi raised a point contained in paragraph 4a of the amended statement of defence which states that:

“ Further or in the alternative, the defendants shall contend at the trial that the benefit provided under the policy is not for the generality of the estate of the deceased which the plaintiffs claim to administer but for two named beneficiaries who only can claim or/and maintain an action under the policy.”

For this contention, reliance is placed on the fact that -

(1) the two beneficiaries are specifically stated in the policy and

(2) on the following provisions under the heading “ Rights in Event of Death of Owner or Beneficiary.”

“The rights of an owner other than the insured [whose] death occurs during the continuance of this contract shall pass to the administrators, executors or assigns of the owner unless otherwise provided herein. The rights of a beneficiary...”

I fail to see how this paragraph or provision assists the defence, for the plaintiffs who commenced this action are in fact the representatives of the deceased insured for the purpose of carrying out the intentions of the deceased by paying the sum due to the beneficiaries. If for one moment I thought it necessary that the beneficiaries should be parties to this action I would on my own motion join them as parties. Further if this action should succeed the order of the court will be for the sum sued upon to be paid into court or invested for the benefit of the beneficiaries.

Now to the substance of the case. The crux of the defence is contained in paragraphs 2-4 of the statement of defence. With paragraph 4a I have already delt. Paragraph 2 reads thus:

“ The defendants admit paragraph 2 of the statement of claim to the extent that Victoria Kehinde Ajala died on the 31st of August 19766, but however aver that the policy of the said Victoria Kehinde Ajala had lapsed prior to her death since the premium for the month of July 1966 was not received until the 26th August, 1966, and placed on deposit.”

This averment is in conflict with the receipts tendered in evidence for exhibit “E.15” shows that the premium for June 1966 was paid on August 15 and exhibit “E.16” that the premiums for July and August were paid on August 24, 1966. It has been said on more than one occasion that if pleadings are to be of any value at all, parties must be held bound by them. The plea in paragraph 2 of the statement of defence is that the policy had lapsed because the premium for July 1966 was not received till August 26, 1966.

The policy exhibit “A” was executed on September 28, 1965, and it is provided inter alia that:

“Premiums for the basic policy are payable as of the policy date and every month thereafter during the lifetime of the insured or until premiums for 25 full years have been paid.”

Though executed on September 28, 1965, the policy date is put at September 13, 1965. I take it therefore that the monthly premiums are payable on the 13th of each month and the premium for July 1966 was due and payable on the 13th of that month.

A period of 31 days’ grace is allowed in the general provisions in these words:

“All premiums are payable annually, semi-annually, or quarterly in advance upon delivery of a receipt signed by an officer of the company listed in the ‘modifications’ provisions of this policy. Except as provided herein the payment of premiums shall not maintain the contract in force beyond the expiration of a grace period of 31 days following the date when the next premium is payable. If death occurs within the grace period, any premium then due and unpaid will be deducted in settlement of this policy.”

I said a little earlier that the premiums were payable monthly, and that, in spite of the fact that these general provisions make no mention of monthly periods. This point was in fact not in dispute at the hearing and in fact all the receipts with the exception of the very last one for £7 12s., i.e. exhibit “ E.16,” show that the premiums were paid monthly.

What then is the effect of this grace period of “31 days following the date when the next premium is payable“? As I read the whole of this clause, the effect put in a positive instead of the negative way contained in the policy is that except as provided in the “Modifications“ provision of the policy the payment of premiums shall only keep the contract in force up to 31 days after the date when the next premium is payable. In short then, if as pleaded in paragraph 2 of the statement of defence, unamended, the month for which the deceased defaulted was July 1966, the 31 days’ grace after the date when the next premium is payable is 31 days from August 13. If therefore by paragraph 2 of the statement of defence the premium was in fact paid on August 26, the period of grace had not expired. The documentary evidence exhibit “E.16” shows that the premiums for July and August were paid on August 25 and not 26 as averred.

This is clearly borne out by the defendants’ letter exhibit “ F “ which was written on August 3, 1966, and reads thus:

Returned Cheque   
Life Policy Number 364,448

“ We enclose herewith a National Bank cheque for £3 16s. 0d. issued by you in respect of your above-numbered policy, which was subsequently returned by the bank marked “Refer to Drawer.”

In the circumstances, we require cash to substitute the returned cheque and July premium is also to be paid in cash to avoid your policy from lapsing. Please your immediate attention will be of utmost help.”

In the evidence of the defendants’ Claims Officer, Mr. M. A. Enigbokan, he said under cross-examination as to the period of grace that:

“There is a period of grace of 31 days. We wrote this letter on August 3, 1966.

Tendered and no objection and marked exhibit ‘ F.’ On August 3, 1966, this policy was still in operation.”

In spite of this he went on to say that the policy lapsed in May after the payment in May. This of course is not their case on their pleadings by which they were bound. It seems to me that either this officer is completely ignorant of the full wording and meaning of the 31 days’ grace contained in the policy or if he is aware of it then his company is shamefully endeavouring to shirk its duty to carry out the terms of the contract made with the deceased.

In the case of Stuart v. Freeman [1903] 1 K.B. 47, 55 Mathew L.J. said this of “period of grace “:

“ In my opinion, the correct view as to the days of grace allowed by the terms of this policy is that if payment is made within the time mentioned it is to be taken to have been made on the day appointed for payment, and is to have the same effect as if it had been made on that day.”

Lord Justice Scrutton said much the same thing when he said in McKenna v. City Life Assurance Co. [ 1919] 2 K.B. 491, 497 that:

“The condition allowing days of grace means that if the premium is paid during those days it shall be treated as if it had been paid on the due date.”

In the particular case before me a payment of premium due on July 13, 1966, could by the period of grace allowed be paid on September 13, 1966, for as I have said the 31 days is by now the very wording of the policy “following the date when the next premium is payable.” I have italicized the material words. It is also of the utmost importance to bear in mind the last sentence in this clause that:

“If death occurs between the grace period, any premium then due and unpaid will be deducted in settlement of this policy.”

Death here did occur during the grace period but of course the payments of premium were brought up to date before death.

That is the main defence but there are other pleas put forward in paragraphs 3 and 4 with which I must of course deal. Paragraph 3 reads thus.

“The defendants also aver that pursuant to the lapsing of the policy of the said Victoria Kehinde Ajala, the said Victoria Kehinde Ajala applied to the defendants for her policy to be reinstated whereupon she was requested to fill the defendants’ Form CL-101, that is Health Certificate requesting the applicant to state whether she has seen a doctor since the inception of her policy to which the said Victoria Kehinde Ajala answered in the negative.”

There is but one answer to this and that is that since I have found the policy had not lapsed a plea based upon something taking place “pursuant to the lapsing of the policy” must fail. There is a second answer too and that is that the clause dealing with reinstatement says that it must be upon “written application.” The evidence before me was that there was no written application.

The other paragraph of the statement of defence, i.e. paragraph 4, is bound up with paragraph 3 and the plea of reinstatement of a lapsed policy. For the same reason that paragraph 3 must fail so must this and the overall effect is that the deceased’s policy at the time of her death being good and subsisting the defendants are in duty bound to honour their agreement exhibit “A”

The plaintiff is therefore entitled to judgment for the full sum insured i.e. £1,000 against the defendant company. This sum is to be paid into court within 14 days from today. Application is to be made by the beneficiaries of the policy, i.e. Morenike Ajala and Olubukonla Ajala, or if minors, by their legal representative on their behalf for the payment out of this sum. The applicants in their application must attach all means of identification available to their affidavit in support, and if made by representatives it will be a condition precedent that the beneficiaries be brought before me.